

2010

# Salt Lake City v. Austin J. Hughes : Reply Brief

Utah Court of Appeals

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## UTAH COURT OF APPEALS

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SALT LAKE CITY,

Plaintiff and Appellee,

VS.

AUSTIN J. HUGHES,

Defendant and Appellant.

Case No. 20100355 CA

Reply Brief of Appellant  
Oral Argument is Requested

Appeal from the Third District Court for the District of Utah  
in and for Salt Lake County, State of Utah,  
Hon. Randall Skanchy, presiding.  
The Defendant/Appellant Is Not In Custody

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UTAH APPELLATE COURTS

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UTAH COURT OF APPEALS

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SALT LAKE CITY,	)	
	)	
Plaintiff and Appellee,	)	
	)	Case No. 20100355 CA
vs.	)	
	)	
AUSTIN J. HUGHES,	)	
	)	
Defendant and Appellant.	)	
	)	

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Appellant Austin J. Hughes raised a simple issue on appeal: Officer Ruff illegally seized Hughes after seeing him running at 2:30 a.m. In its brief, the City raises as its first argument Hughes' alleged failure to properly marshal the evidence in his brief. This simply is not the case. Hughes' analysis on the issue was thorough and discussed all relevant facts relied on by the trial court.

It is difficult to discern the precise argument the City is attempting to make with its marshaling argument. Hughes offered a thorough analysis which is supported with numerous citations to the Record describing exactly what the trial court relied on.

Consequently, the City's marshaling argument is without merit and should be disregarded by the Court.

In his opening brief, Hughes discussed at length the fact that Officer Ruff failed to mention anywhere in his written report the alleged jaywalking violation which the City claims justifies the initial seizure. Hughes argued that the cross-examination of Officer Ruff revealed how incredible Ruff's testimony was and cited to particular portions of the Record to support the argument. However, Hughes did fail to articulate the proper standard of review for this Court to analyze his argument that the trial court erred in its factual finding that Officer Ruff witnessed a jaywalking violation. Consequently, the standard to be applied by this Court when reviewing the factual findings underlying the trial court's decision to deny a motion to suppress is a clearly erroneous standard. *See State v. Parra* 972 P.2d 924, 926 (Utah Ct.App. 1998).

The City argues also that this Court should apply an objective analysis in determining the validity of the stop without development of the legal authority or any reasoned analysis. (See Br. of Appellee, 11 (discussion of *State v. Lopez*, 873 P.2d 1127 (Utah 1994))("The Utah Supreme Court upheld the objection [sic] standard of judging the reasonableness of a search or seizure. . ."). The City offers a three sentence discussion without any reasoned legal analysis. Consequently, the Court

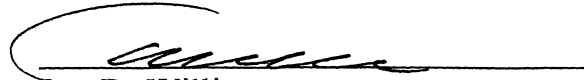
should find the City's argument both conclusory and inadequately briefed pursuant to the Rules. *See Utah R.App.P. 24(a)(9)*. An issue which has been inadequately briefed ultimately "shift[s] the burden of research and argument to the reviewing court" and therefore should not be considered on the merits. *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998).

The City's brief contains multiple arguments that this Court consider what Officer Ruff *did not* do after the initial seizure. For example, the City argues "Ruff testified that he did none of the following when stopping the defendant: a. Shout at him; (R 75:9) b. Place him in handcuffs; (R 75:9) . . ." (*See Br. of Appellee*, 4)." "Officer Ruff testified he did not put the defendant in handcuffs . . ." (*See Br. of Appellee*, 11). Anything occurring after the initial seizure of Hughes is not relevant to this Court's inquiry into whether Ruff was justified in the initial seizure. Consequently, the Court should disregard the City's suggestion that because Officer Ruff did not shout at, shine his flashlight at or rush Hughes after he commanded him to stop somehow support the initial seizure.

#### CONCLUSION AND PRECISE RELIEF SOUGHT

Hughes requests that this Court reverse the trial court's denial of his motion to suppress and remand this case to the Third District Court for further proceedings.

DATED this 24 day of September, 2010.



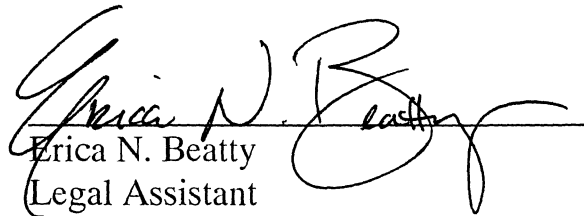
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Attorney for Appellant



## MAILING CERTIFICATE

I hereby certify that, on this 24<sup>th</sup> day of September, 2010, I mailed a true and correct copy of the foregoing, via first class U.S. Mail, postage pre-paid, to the following:

Salt Lake City Prosecutor's Office  
349 South 200 East, Suite 500  
Salt Lake City, Utah 84114-5500

  
Erica N. Beatty  
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